

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JAVIER BENITEZ,

Case No. 3:24-cv-00088-MMD-CLB

Plaintiff.

ORDER

CITY OF RENO, *et al.*

Defendants.

11 Pro se Plaintiff Javier Benitez has filed an application to proceed *in forma pauperis*
12 ("IFP") (ECF No. 3) and a civil rights complaint under 42 U.S.C. § 1983. (ECF No. 3-1
13 ("Complaint"). Before the Court is the Report and Recommendation ("R&R") of United
14 States Magistrate Judge Carla L. Baldwin, recommending the Court grant Benitez's IFP
15 application and screening his Complaint. (ECF No. 8.) To date, Benitez has not filed an
16 objection to the R&R. The Court will adopt the R&R in full.

Because there is no objection, the Court need not conduct *de novo* review, and is satisfied that Judge Baldwin did not clearly err. See *United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and recommendations is required if, but *only* if, one or both parties file objections to the findings and recommendations.”).

I. IFP APPLICATION

Judge Baldwin recommended granting Benitez's IFP application because his application reveals that he cannot pay the filing fee. (ECF No. 8 at 2.) The Court is satisfied that Judge Baldwin did not clearly err in finding that Benitez has met the appropriate standards to proceed IFP and adopts her recommendation. Benitez is permitted to maintain this action without prepaying the filing fee.

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1 **II. SCREENING OF COMPLAINT**

2 Judge Baldwin then screened each of the three claims against Defendants City of
 3 Reno, Reno Police Department (“RPD”), RPD Officer Frady #14626, and John/Jane Does¹
 4 in Benitez’s Complaint under 28 U.S.C. § 1915A. (ECF No. 8 at 3-8.) The Court will review
 5 Judge Baldwin’s recommendations as to each claim in turn.

6 **A. Excessive Force Claim**

7 Judge Baldwin first found that Benitez has stated a colorable Fourth Amendment
 8 excessive force claim. (ECF No. 8 at 3-4.) Benitez alleges that RPD Officer Frady and
 9 other Doe RPD officers used excessive force against him by pointing their guns at his
 10 head while his hands were up, he posed no threat, and he neither was the suspect nor
 11 matched the physical description of the suspect. (*Id.* at 3; ECF No. 3-1 at 3.) The officers
 12 also shouted death threats at Benitez. (ECF No. 3-1 at 3.) As the Ninth Circuit has found
 13 excessive force was used under similar circumstances, the Court finds that Judge
 14 Baldwin did not clearly err and adopts this recommendation. See *Tekle v. United States*,
 15 511 F.3d 839, 845 (9th Cir. 2007) (“[T]he pointing of a gun at someone may constitute
 16 excessive force, even if it does not cause physical injury.”). Benitez may proceed with his
 17 excessive force claim against Frady and Doe Officers.

18 **B. Municipal Liability**

19 Judge Baldwin next found that the municipal liability claims against the City of
 20 Reno and RPD should be dismissed, without prejudice, but with leave to amend. (ECF
 21 No. 8 at 4-5.) Benitez alleges that Reno and RPD did not provide adequate training or
 22 supervision to RPD officers. (*Id.* at 5; ECF No. 3-1 at 4.) Reno and RPD, as municipal
 23 entities, cannot be held vicariously liable for their employees’ conduct the way a private
 24 employer could. See *Connick v. Thompson*, 563 U.S. 51, 60 (2011).

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 26 ¹As Judge Baldwin noted, the use of “Doe” to identify a defendant is not favored,
 27 but flexibility is allowed where the identity of the parties will not be known prior to filing a
 28 complaint but can subsequently be determined through discovery. *Gillespie v. Civiletti*,
 629 F.2d 637, 642 (9th Cir. 1980). If the true identity of any of the Doe Defendants comes
 to light during discovery, Plaintiff may move to substitute the true names of Doe
 Defendants to assert claims against the Doe Defendants at that time.

1 There are three avenues by which Benitez could bring a successful Section 1983
 2 claim against Reno or RPD. *Clouthier v. Cnty. of Contra Costa*, 591 F.3d 1232, 1249-50
 3 (9th Cir. 2010). However, Benitez has not identified an official policy or custom that
 4 caused his injury, or that Reno or RPD's omissions have risen to the level of being the
 5 local government's official policy. See *id* at 1249. Nor has Benitez established that "the
 6 individual who committed the constitutional tort was an official with final policy-making
 7 authority' or such an official 'ratified a subordinate's unconstitutional decision or action
 8 and the basis for it." See *id* at 1250 (quoting *Gillette v. Delmore*, 979 F.2d 1342 1346-47
 9 (9th Cir. 1992)). Because Benitez has not shown that Reno or RPD qualify for municipal
 10 liability, his allegations are not sufficient to pass the screening stage. The Court finds that
 11 Judge Baldwin did not clearly err and adopts this recommendation.

12 **C. False Imprisonment**

13 Judge Baldwin finally found that Benitez's false imprisonment claim was a
 14 challenge to the validity of his custody, which must instead be remedied through a writ of
 15 habeas corpus. (ECF No. 8 at 6-7.) *Edwards v. Balisok*, 520 U.S. 641, 648 (1997); *Heck*
 16 *v. Humphrey*, 512 U.S. 477, 481-83 (1994); *Wolf v. McDonnell*, 418 U.S. 539, 554-55
 17 (1974); *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973); *Simpson v. Thomas*, 528 F.3d
 18 685, 695 (9th Cir. 2008). Benitez alleges that he was jailed because Frady falsified a
 19 charge of resisting a public officer. (*Id.* at 6; ECF No. 3-1 at 5.) He further claims that the
 20 officers never read his Miranda rights or explained why they were arresting him, and that
 21 Defendants refused to transport him to court and thus prolonged his sentence. (ECF Nos.
 22 3-1 at 5; 8 at 6-7.) This led Judge Baldwin to conclude that Benitez is challenging the
 23 constitutionality of his conviction. Accordingly, until Benitez demonstrates that this
 24 conviction has been overturned, he cannot proceed in a Section 1983 action for these
 25 claims.

26 The Court is satisfied that Judge Baldwin did not clearly err. Having reviewed the
 27 R&R and the record in this case, the Court will adopt the R&R's recommendations in full.

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1 **III. CONCLUSION**

2 It is therefore ordered that Judge Baldwin' R&R (ECF No. 8) is accepted and
3 adopted in full.

4 It is further ordered that Plaintiff's IFP application (ECF No. 3) is granted. Plaintiff
5 is permitted to maintain this action without prepaying the filing fee.

6 The Clerk of the Court is directed to file the Complaint (ECF No. 3-1).

7 It is further ordered that Plaintiff's excessive force claim may proceed against
8 Frady and the Doe officers. If the true identity of any of the Doe Defendants comes to
9 light during discovery, Plaintiff may move to substitute the true names of Doe Defendants
10 to assert claims against the Doe Defendants at that time.

11 It is further ordered that Plaintiff's municipal liability claims against the City of Reno
12 and the Reno Police Department are dismissed without prejudice and with leave to
13 amend.

14 It is further ordered that Plaintiff's false imprisonment claim is dismissed without
15 prejudice and with leave to amend.

16 It is further ordered that Plaintiff has 30 days—that is, until May 2, 2024—to file an
17 amended complaint to correct the deficiencies identified in this order. The Clerk of Court
18 is directed to send Plaintiff instructions for submitting a complaint and a form complaint.
19 The amended complaint must be complete in and of itself without referring to or
20 incorporating by reference any previous complaint or other filings. Any allegations,
21 parties, or requests for relief from a prior complaint that are not carried forward in the
22 amended complaint will no longer be before the Court. Plaintiff must clearly title the
23 amended pleadings as "Amended Complaint" or check the appropriate box for an
24 amended complaint if she is using the form complaint. If Plaintiff fails to file an amended
25 complaint within 30 days, this action will proceed on the excessive force claim against
26 Frady and the Doe officers, and the claims against the City of Reno and the Reno Police
27 Department and the false imprisonment claim will be dismissed with prejudice.

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DATED THIS 2nd Day of April 2024.

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MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE